THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.21571 OF 1998

Between:

T.Gyana Kumari, Khammam.

……..Petitioner.

Vs.

State of A.P., represented by Principal Secretary, School Education, Secretariat Building, Saifabad, Hyderabad and three others.

…….Respondents.

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.21571 OF 1998

O R D E R:

The short but important question of law arises for consideration in this writ petition is whether the petitioner is entitled for all the service benefits from the date of his appointment on 07.11.1996 or from the date of approval of her appointment on 27.02.1998 as Secondary Grade (Hindi Pandit) in the respondent School.

It appears that in pursuance to a notification issued by the respondent school, the petitioner applied for the post of Secondary Grade (Hindi Pandit) against an aided vacancy, and she was subjected to selection process and after being selected, was given appointment order on 07.11.1996, subject to approval of the competent

authority. She joined the services of the School on 19.11.1996 against an aided vacancy, as per the appointment order, dated 07.11.1996. Thereafter, the management of the school sent the proceedings of the Selection Committee and also the appointment of the petitioner for the approval of the second respondent-Director of School Education, Nampally, Hyderabad. The second respondent granted approval on 27.02.1998. However, while granting approval, the second respondent directed the third respondent-District Educational Officer, Khammam, to inform the Educational Agency (School) to issue appointment orders to the selected candidates as per the provisions under Rule 12(9) (of G.O.Ms.No.1/Edn., dated 01.01.1994.) According to the petitioner, though she has been put on regular time scale with effect from 27.02.1998, she was not extended the service benefits from the date of initial appointment, i.e., 07.11.1996. Therefore, the same is arbitrary and illegal.

No counter is filed.

The learned counsel for the petitioner strenuously contended that when once the petitioner has been appointed on 07.11.1996, her approval as Secondary Grade (Hindi Pandit) against an aided vacancy was only a mere formality. On the other hand, though the competent authority approved her appointment on 27.02.1998, the District Educational Officer stated that she is entitled for all the service

benefits only from the date of approval granted by the competent authority i.e., on 27.02.1998, but not from the date of appointment. Further, from a plain reading of Rule 12(8) and Rule 12(9) of the Andhra Pradesh Establishment of Schools (Private including minority) Rules, (for short the Rules) the petitioner is entitled for all the service benefits from the date of her appointment i.e., 07.11.1996. Therefore, the impugned order ought to have been given a retrospective effect for the purpose of appointment, instead of extending the benefits from the date of approval i.e., 27.02.1998.

The learned counsel for the respondents strenuously contended that since the very appointment of the petitioner on 07.11.1996 was subject to approval by the competent authority and the competent authority gave its approval only on 27.02.1998, the petitioner is not entitled for any benefits prior to the date of actual approval granted by the competent authority. Hence, the petitioner is not entitled for any benefits from 07.11.1996 to 27.02.1998. Rule 12(8) and 12(9) of the Rules are very clear in this regard and therefore, the petitioner is not entitled for any relief as sought for.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

Rules 12(8) and 12(9) of the Rules read as under:

> **Rule12(8):**
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> "All appointments made either teaching or non-teaching staff by aided or un-aided institutions shall be subject to the approval of the competent authority. For this purpose the educational agency shall inform the competent authority within one month of the selection. The competent authority shall grant approval unless the selection has been in violation of these rules. If the approval is not granted within two months from the date of receipt of the proposals in respect of un-aided posts, the approval shall be deemed to have been granted. In order to obviate confusion, it shall be incumbent on the educational agency to remind the competent authority one month after the initial communication, if no approval is received. The burden of proof of having communicated the selection to the competent authority shall lie with the educational agency.
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> **Rule 12(9)**
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> The educational agency shall make the appointments only on the approval as per sub-rule

(8) above and any appointment made by the Educational agencies in violation of any of the provisions of Rule 12 shall be made null and void."

A plain reading of Rules 12(8) and 12(9) would indicate that all appointments made either teaching or non-teaching staff by aided or un-aided institutions shall be subject to the approval of the competent authority. It does not indicate that the prior approval is a mandate for appointment. The appointments made by the institutions need to be approved by the competent authority. That does not mean that the petitioner is not entitled for the benefits from the date of her appointment i.e., 07.11.1996 as stated by the respondents.

Further, Rule 12(9) would indicate that the Educational Agency shall make appointments only on approval as per Rule 12(8) of the Rules. Rule 12(9) of the Rules has to be read along with 12 (8) of the Rules, since 12(8) of the Rules contemplates that the competent authority shall grant approval, unless the selection has been in violation of the Rules. In this case, admittedly, there was no objection taken by the competent authority and the approval was made against

an appointment of the petitioner on 07.11.1996 as Secondary Grade Hindi Pandit, against an aided vacancy, on 27.02.1998 i.e., one year three months after the date of appointment of the petitioner. In a given case, where a teacher who was already working in an un-aided vacancy was selected by duly constituted Selection Committee and recommended by the management for approval of his/her appointment, probably, in such a case, the teacher who was already working in an un-aided vacancy can weight for the approval of the competent authority, but whereas in a case like this, where a direct recruitment had taken place by giving appointment order, dated 07.11.1996 after subjecting to regular selection process, I am of the opinion that denying the service benefits from the date of her appointment i.e., 07.11.1996 would be arbitrary and illegal. The very Rule 12(8) of the Rules says that all appointments made either teaching or non-teaching staff against aided or un-aided vacancies, shall be subject to the approval of the competent authority. That means, as soon as the selection process is completed, the institutions are entitled to appoint the duly selected candidates, subject to approval of the competent authority, but nowhere it is stated that the prior approval of the

competent authority is required before appointing the petitioner. The language imported into Rule 12(9) of the Rules i.e., the Educational Agency shall make the appointments only on the approval as per Sub Rule 8 of the Rules extracted above, (any appointment made by the Educational Agency in violation of any of the provisions of Rule 12 of the Rules shall be null and void) does not mean that the benefits of service when appointed against an aided vacancy would accrue from the date of approval but not from the date of appointment.

In view of the above, I am of the opinion that the petitioner is entitled for all the benefits from the date of her appointment i.e., 07.11.1996.

Therefore, the writ petition is allowed and the petitioner is entitled to all consequential benefits, such as salary, increment and seniority. No order as to costs.

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C.V.RAMULU J.,

Dt.19.09.2007
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